

REMARKS:

Claims 1-12 and 14 are in the case and presented for consideration.

Claim 13 has been canceled without prejudice to Applicant's right to pursue the canceled subject matter in a continuing application. Rejection of claim 13 under 35 U.S.C. § 112 is therefore believed to be moot.

Applicant would like to thank the Examiner for the careful review of this application. Applicant has corrected the temperature unit expression errors on paragraphs [0065], [0068], and [0070] of the specification. Support for the corrections can be found, for example, on page 18, second paragraph, of the priority application, i.e., International Application No. PCT/JP99/02897.

Applicant has also amended paragraphs [0015], [0039], [0048], [0059] and [0068] of the specification to improve the clarity and understanding of the expression several tens of micron or micrometers, which is analogous to the more familiar expression several hundreds or thousands of items. Several "tens" of items is of the same idiomatic form but refers to tens of items rather than to hundreds or thousands of items.

Accordingly, the specification no longer contains the issues raised by the Examiner, and reconsideration and withdrawal of the objections to the specification is respectfully requested.

A terminal disclaimer for overcoming the Examiner's non-statutory double patenting rejection is attached herein.

Declaration

The Examiner alleges that the declaration from the parent application and filed with

the above-identified application is defective because:

the parent case application 09/979,822 (now US 6,740,442) is not referenced on page 2 of the Declaration as well [as] amendments submitted in the above identified application have not been referenced on page 1 of the Declaration.

In response, Applicant respectfully traverses the Examiner's determination and directs the Examiner's attention to 37 C.F.R. § 1.63(d)(1), which states that "[a] newly executed oath or declaration is ***not required... in a continuation or divisional application*** (emphasis)" when the conditions set forth in 37 C.F.R. § 1.63(d)(1)(i) to (iv) and C.F.R. § 1.63(a) to (c) are met. Regarding the identification of the parent application in a declaration submitted in said application, while C.F.R. § 1.63(b)(1) requires the oath or declaration to identify the application to which it is directed, MPEP § 602 (VI) specifically states that "*compliance with any one of the items below will be accepted as complying with the identification requirement of 37 CFR 1.63:*

(A) name of inventor(s), and reference to an attached specification which is both attached to the oath or declaration at the time of execution and submitted with the oath or declaration on filing;

(B) name of inventor(s), and attorney docket number which was on the specification as filed; or

(C) name of inventor(s), and title of the invention which was on the specification as filed."

(See MPEP § 602 (VI)).

Accordingly, the declaration of the parent application cannot be defective because it was filed concurrently with the present application, which is a continuation application, and the declaration of the parent application at least identified the name of the inventor and

the title of the invention. However, if objection to the declaration is maintained, Applicant respectfully requests the Examiner to identify the provision of 37 CFR § 1.63 that has not been complied with so that Applicant may address the Examiner's concerns accordingly.

Claim Rejections

Claims 1-8 and 11-13 are rejected as being anticipated by U.S. Patent 4,476,196 to Poeppel, et al. (hereinafter referred to as "Poeppel"). The Examiner alleges that Poeppel discloses the solid oxide fuel cell, as recited in the claims. See pages 3-5 of the February 16, 2006 Office Action.

In response, Applicant respectfully traverses the above ground of rejection.

Applicant's independent claim 1 recites:

A single cell of a flat plate type solid oxide fuel cell comprising:
a first electrode member consisting of a porous substrate;
an electrolyte film formed on either a front surface or a back surface of said first electrode member;
a second electrode member formed on said electrolyte film;
a separator film formed on the other surface of said first electrode member;
said first electrode member being one of a fuel electrode and an air electrode and said second electrode member being the other one of said fuel electrode and said air electrode; and
a seal portion covering all side surfaces of said first electrode member.

One of the features of the single cell embodiment of the present invention which distinguishes it from the Poeppel reference is that "the *fuel electrode* and the *air electrode* are likewise the porous substrates so that the fuel gas or air can *pass through the inside...*" (see, e.g., page 37, paragraph [0081]). Generally, electrodes used in fuel cells are required to have some porosity. However, the porosity of the electrodes referred to is a

porosity needed to provide better conditions for the electrochemical reaction. That porosity is different from porosity which permits a gas (fuel or air) to *pass fully through the electrode*, and which is needed for a single cell of the invention claimed, for example, in claim 1 to operate.

Only the present invention recognizes that the gas flow porosity of the electrodes is important, so that an additional fuel and oxidant passageways are not needed (see, e.g., pages 13-14, paragraph [0038], of the specification, stating that:

[the] porous plate material is formed so that the fuel gas can satisfactorily pass through it and has the necessary strength as the single cell 1 and the sufficient conductivity for electrons or oxygen ions.”).

In the cited references, gas flow passage is significantly larger than the gas flow path provided by the claimed porous substrate forming the at least one electrode (see, e.g., Poeppel, Fig. 3, Item 13 and 14). Also, since the single cell embodiment of the present invention has a simpler structure when compared with prior art single cells that form a gas flow path by providing a rib or like structure, the production steps and cost of each fuel cell as well as the fuel cell stack 14 are greatly reduced. This and other advantages offered by the present invention are not disclosed or recognized by Poeppel or any of the cited references.

With regards to claims 9 and 10, these claims depend from claim 1, and therefore should be patentable at least for the reasons given for claim 1.

Applicant submits that the claims are distinguishable from the several cited patents, and the claimed invention is novel and non-obvious from the prior art of record. Accordingly, the application and claims are believed to be in condition for allowance, and favorable action is respectfully requested. No new matter has been added.

If any issues remain which may be resolved by telephonic communication, the Examiner is respectfully invited to contact the undersigned at the number below, if such will advance the application to allowance.

Respectfully submitted,

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